

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE:

B-219760.2

DATE: August 23, 1985

MATTER OF:

Engineers International Inc.--  
Reconsideration

## DIGEST:

1. The fact that a small minority-owned firm's president was overseas when notice of the basis of a protest was received by the firm does not provide a compelling reason beyond the protester's control for GAO to consider the protest under the "good cause" exception.
2. Although the protester alleges that it did not know of the requirement concerning the time for filing of a GAO protest, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

Engineers International, Inc. (EI), requests reconsideration of our July 31, 1985, dismissal of its protest in connection with the Nuclear Regulatory Commission's (NRC) solicitation No. RS-NMS-85-002. EI's protest was dismissed as it was not filed within 10 working days of the date the basis for protest was known or should have been known as is required by our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2) (1985).

We deny the request for reconsideration.

Although EI was advised by NRC on June 24, 1985, that its offer was outside the competitive range and that no further consideration would be given to its offer, the protest was not filed with our Office until July 31. EI states that since it had contacted the NRC by phone trying to resolve the matter with NRC prior to protesting to our Office, its protest to GAO should be considered timely.


EI, however, did not actually protest to NRC, but merely had phone conversations in an attempt to resolve the matter. EI's president, who was out of the country at the time, admits that only he had authority to file a protest. Therefore, EI's conversations with NRC officials did not constitute an agency-level protest.

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Next, EI asserts that since its president was overseas when notice was received that its offer was not going to be considered and since it is a small, minority-owned business and was unaware of the timeliness requirement in our regulations, the requirement for filing within 10 working days should be waived.

Our Bid Protest Regulations set precise time limits for filing bid protests to enable this Office to decide an issue while corrective action is possible. We will consider the merits of a bid protest not filed within the precise time-frame required where good cause is shown. The good cause exception, however, is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of a protest. Knox Manufacturing Co.-- Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 C.P.D. ¶ 281. The fact that EI's president was overseas and could not personally respond to the NRC's decision until he returned does not fall within the good cause exception. In addition, the fact that EI was unaware that its protest should be filed within 10 days of its knowledge of NRC's decision not to consider its offer does not provide a basis for GAO to waive its procedures because bidders are on constructive notice of our Bid Protest Regulations since they are published in the Federal Register and the Code of Federal Regulations. Westwood Pharmaceuticals Inc., B-214603, July 25, 1984, 84-2 C.P.D. ¶ 111.

The request for reconsideration is denied.

*for*   
Harry R. VanCleve  
General Counsel